IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	**Case No. 16-32617**
HERMAN E. HOFFMAN, JR.	§	**(Chapter 12)**
	§	
Debtor.	§	
	§	
	§	
SOUTHERN BANCORP BANK,	§	
Plaintiff,	§	**Adversary Proceeding**
	§	
v.	§	**No. ________________**
	§	
HERMAN E. HOFFMAN, JR.,	§	
	§	
	§	
Defendant	§	

COMPLAINT

Southern Bancorp Bank, by and through its attorneys, Okin Adams LLP and Wright, Lindsey & Jennings LLP, files this complaint ("Complaint"), and respectfully states as follows:

PARTIES

1. Southern Bancorp Bank ("Southern") is an Arkansas chartered bank with its principal place of business in Arkadelphia, Arkansas.

2. Herman E. Hoffman (the "Debtor") is a resident of Conroe, Texas and is a debtor in the above-captioned chapter 12 bankruptcy case.

3. This adversary proceeding arises out of and relates to the above-captioned chapter 12 case.

4. The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1334.

5. This is a core proceeding, and the court has the power and authority to enter a final order pursuant to 28 U.S.C. § 157(b)(2)(I). In accordance with Local Rule 7008-1, Plaintiff consents to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1409 as this adversary proceeding arises under Title 11, and the Plaintiff commenced this proceeding in the above-captioned bankruptcy case.

BACKGROUND

7. The Debtor filed his chapter 12 bankruptcy petition on May 19, 2016 (the "Petition Date").

8. Prior to his bankruptcy filing, on or about May 11, 2012, Debtor executed a promissory note in favor of Southern in the principal amount of $350,080.00, bearing interest at the rate of 6.5% per annum (the "Note") in connection with Loan No. 4539995. A true and correct copy of the Note is attached hereto and incorporated herein as Exhibit A.

9. Under the terms of Note, the Debtor promised to pay Southern monthly installment payments of $5,211.66 beginning June 25, 2012.

10. The Note also provides that in the event of default by the Debtor, Southern may declare the entire unpaid principal balance under the Note due and owing.

11. To secure payment of the Note, the Debtor and the Good-Bye Company LLC ("Good-Bye Company") executed a Commercial Security Agreement, dated May 11, 2012 (the "Security Agreement").

12. Pursuant to the terms of the Security Agreement, the Debtor and the Good-Bye Company granted Southern a secured interest in a 2008 Country Coach Motor Home, Vin No. 4U7C9FT1281080129) (the "Motor Coach") "to be titled in the name of the Good-Bye Company LLC" and to be located at 10066 League Line Rd., Conroe, Texas 77304. A true and correct copy of the Security Agreement is attached hereto and incorporated herein as Exhibit B.

13. The Security Agreement was signed by the Debtor individually and also as managing member of the Good-Bye Company.

14. Upon information and belief, the Debtor is the sole member of the Good-Bye Company.

15. The loan proceeds were used to purchase the collateral Motor Coach. A true and correct copy of the wire transfer by Southern to the seller of the Motor Coach is attached hereto and incorporated herein as Exhibit C.

16. Pursuant to the Security Agreement, the Debtor and Good-Bye Company represented to Southern that Good-Bye Company held good and marketable title to the collateral Motor Coach.

17. The Debtor and Good-Bye Company further agreed to take whatever actions were necessary to perfect and continue Southern's interest in the collateral Motor Coach.

18. Additionally, the Debtor and Good-Bye Company promised to inform Southern if the collateral Motor Coach was moved from the address listed on the Security Agreement, except for routine travel.

19. The Debtor and Good-Bye Company also represented to Southern that they would not sell, offer to sell, or otherwise transfer of dispose of the collateral.

20. Southern relied on these representations in making Loan No. 4599995 to the Debtor and in transferring the funds for purchase of the Motor Coach.

21. The Debtor subsequently failed to make payments according to the terms of the Note and therefore was in default.

22. Southern exercised its right under the terms of the Note and declared the entire unpaid balance and accrued and unpaid interest immediately due and payable.

23. Under the terms of the Security Agreement, Southern was also entitled to foreclose on its Security Interest in the Motor Coach if the Debtor defaulted his obligations under the Note.

24. Accordingly, Southern filed a complaint in the Circuit Court of Clark County, Arkansas, on September 23, 2014, to obtain a judgment against Debtor for the outstanding balance owed on the Note and foreclose on its secured interest in the Motor Coach.

25. However, during litigation, which was halted due to the Debtor's bankruptcy filing, the Debtor refused to produce the Motor Coach or inform Southern as to its whereabouts.

26. Furthermore, upon investigation, Southern discovered that the Debtor and Good-Bye Company did not title the Motor Coach in Good-Bye Company's name, as promised in the Security Agreement.

27. Upon information and belief, contrary to the Debtor's representations title to the Motor Coach was assigned to Premium Star LLC, an entity owned by K. Hoffman. Further, upon information and belief, post-petition, Premium Star transferred the Motor Coach to a related, non-debtor individual.

Count I
Breach of Contract

28. Plaintiff incorporates all preceding paragraphs as if fully repeated herein.

29. Pursuant to the Note, the Debtor promised to pay the amounts owed related to Loan No. 4539995.

30. Debtor failed to make the required payments and is in default.

31. Debtor has therefore materially breached the terms of the Note.

32. As a direct and proximate result of the Debtor's material breach of the Note, Southern has suffered damages in the amount of $328,249.63 as of August 3, 2016.

33. The terms of the Note provide that the Debtor is liable for all attorneys' fees and costs incurred in enforcing the Note.

34. The terms of the Note also provide that Arkansas law govern the contract.

35. As a result, Southern is entitled to recover its fees and costs pursuant to the Note and also pursuant to Arkansas law, Ark. Code Ann. § 16-22-308.

Count II
Fraud

36. Plaintiff incorporates all preceding paragraphs as if fully repeated herein.

37. Debtor represented to Southern that the proceeds of Loan No. 4539995 were to be used to purchase the Motor Coach, which was "to be titled in the name of the Good-Bye Company LLC," and that the Note would be secured by a valid security interest in the Motor Coach. Despite these representations, Defendant never intended to cause the Motor Coach to be titled in the name of Good-Bye Company.

38. Alternatively, after making this representation, the Debtor fraudulently caused Southern's collateral to be titled in an entity other than the Good-Bye Company and fraudulent concealed such acts from Southern.

39. Debtor made these false representations for the purpose of inducing Southern to loan funds to the Debtor pursuant to the Note.

40. Southern reasonably relied on the Debtor's representations in issuing and funding Loan No. 4539995.

41. As a direct result of the Debtor's intentional false representations, Southern has suffered harm.

Count III
Dischargeability of Debt
11 U.S.C. § 523(a)(2)(A)

42. Plaintiff incorporates all preceding paragraphs as if fully repeated herein.

43. Under 11 U.S.C. §523(a)(2)(A), a debtor may not receive a discharge from any debt for money to the extent obtained by false pretenses or actual fraud.

44. The debt incurred by the Debtor was obtained by false pretenses and/or actual fraud.

45. Debtor represented to Southern that the proceeds of Loan No. 4539995 were to be used to purchase the Motor Coach, which was "to be titled in the name of the Good-Bye Company LLC," and that the Note would be secured by a valid security interest in the Motor Coach. Despite these representations, Defendant never intended to cause the Motor Coach to be titled in the name of Good-Bye Company.

46. Debtor made these false representations for the purpose of inducing Southern to loan funds to the Debtor pursuant to the Note.

47. Southern reasonably relied on the Debtor's representations in issuing and funding Loan No. 4539995.

48. As a direct result of the Debtor's intentional false representations, the debt owed to Southern is now wholly unsecured.

49. Based on the foregoing, the debt owed to Southern related to Loan No. 4539995 should be determined nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

50. As of August 3, 2016, the outstanding balance owed to Southern for Loan No. 4539995 is $328,249.63. However, interest continues to accrue on the unpaid balance.

Count IV
Dischargeability of Debt
11 U.S.C. § 523(a)(6)

51. Plaintiff incorporates all preceding paragraphs as if fully repeated herein.

52. Debtor willfully misrepresented ownership of the Motor Coach and took intentional actions to prevent Southern from being able to secure its interest in the Motor Coach.

53. The purpose of Debtor's intentional misrepresentations was to obtain funds from Southern which would not be repaid and could not be recovered by Southern.

54. Debtor's actions intended to cause loss to Southern, or were certain to result in a loss to Southern, as Loan No. 4539995 is now wholly unsecured and otherwise subject to discharge in the Debtor's bankruptcy.

55. Upon information and belief, Debtor has now transferred the collateral Motor Coach to a related third party entity, fully aware of Southern's purported security interest and fully aware that titling the Motor Coach in the name of any entity other than Good-Bye Company was wrong and would cause financial harm to Southern.

56. Based on the Debtor's conduct and intent to cause willful and malicious injury to Southern, the debt owed to Southern related to Loan No. 4539995 should be determined nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

WHEREFORE, Southern Bancorp Bank respectfully requests: (i) a money judgment in the amount of $328,249.63, plus pre-and post-judgment interest, attorneys' fees and costs; (ii) for a determination by the Court that the debt related to Loan No. 4539995 is a nondischargebale obligation pursuant to 11 U.S.C. § 523(a); (iv) and for all other proper relief to which it is entitled.

Respectfully submitted,

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